

BOARD OF APPEALS CASE NO. 5018

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BEFORE THE

APPLICANT: Claudia Kraft

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ZONING HEARING EXAMINER

**REQUEST: Variance for an existing
carport located within the side yard setback;
403 Gilmor Road, Joppa**

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 3/1/00 & 3/8/00

HEARING DATE: March 27, 2000

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Record: 3/3/00 & 3/10/00

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ZONING HEARING EXAMINER'S DECISION

The Applicant, Claudia Kraft, is requesting a variance to Section 10.05, Ordinance 6, of the 1957 Zoning Ordinance, to allow an existing carport to remain within the required eight (8) foot side yard setback in an R3 Urban Residential/Community Development Project (R3/CDP). The existing setback is an average of 3.5 feet.

The subject property is located at 403 Gilmor Road, Joppatowne, in the First Election District. The parcel is more specifically identified as Parcel 0135, in Grid 1B, on Tax Map 69. The parcel is approximately 10,937 square feet in size, all of which is zoned R3/CDP.

Ms. Kraft appeared and testified that she is seeking a variance to allow her to retain an existing carport in which she stores a boat. According to Ms. Kraft, the property is unusual in that it slopes upward towards the adjoining property on the left as well as on the right, with a downward slope towards the back of the property. There is no level area on the lot where the boat could be stored other than to the left of the garage, which is where the carport is located. The carport has a concrete foundation and a shingled roof. Ms. Kraft stated that she had investigated building the carport so that it would be detached from the garage and house, but she was informed this would not be the best or most stable form of construction. She indicated that she had the carport built because there were problems in the neighborhood with people storing their boats on the street. The boat will not fit in the garage and there is no way to make the carport smaller or narrower so as to allow for an increase in the side yard setback while still accommodating the size of the boat.

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Ms. Kraft testified that she has had no complaints from the neighbors. While there is only one-and one-half (1.5) feet between the carport and the side yard property line (and a neighbor's fence), the average side yard setback is approximately three and one-half (3.5) feet. A denial of the variance would cause practical difficulty, according to Ms. Kraft, because she would not be able to store the boat on her property as she desires.

The Staff Report issued by the Department of Planning and Zoning states as follows:

"Although the property does contain some unique features regarding topography and shape, the Department is concerned with the amount of encroachment into the side yard setback and possible impact on the adjacent property. The 1957 Zoning Ordinance only required a minimum 8 foot side yard setback (total side yard of 18 feet) for one-story dwellings in the R3 Urban Residential District. If the variance is approved, the setback would be reduced on the rear corner of the carport to approximately 1.5 feet with an average setback of 3. 5 feet overall."
(Emphasis added)

The Department made no recommendation regarding the request.

No witnesses appeared in opposition to the request.

CONCLUSION:

The Applicant is requesting a variance to Section 10.05, Ordinance 6 of the 1957 Zoning Ordinance to allow an existing carport within the required 8 foot side yard setback. The Applicant is seeking an average of a 4.5 foot variance, (6.5 feet in the closest section), the existing setback totaling 3.5 feet on average.

While it is commendable that the Applicant wishes to keep her boat off the street and improve the appearance of the neighborhood, the evidence suggests that the Applicant cannot meet the legal requirements for a variance under the law. The Applicant did present evidence to show that the topography of the lot is somewhat unique in that the only level area appears to be that upon which the dwelling sits. However, photographs also demonstrate that adjoining properties appear to have sloping terrain, some even more pronounced than that on the subject property. It does appear that denial of the variance will cause the Applicant practical difficulty in that the carport will have to be removed and the boat stored elsewhere.

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However, it was the Applicant who created the difficulty by building the carport without a permit and without obtaining the variance prior to construction. If the Applicant had sought the variance prior to construction, with a proposed 1.5 foot setback as it now exists, it is unlikely the variance would have been approved in the first place.

The Hearing Examiner finds that the extremely limited setback has the potential to adversely impact the adjoining property and the public safety and welfare. Although the Applicant testified that she believes that there is adequate room between the carport and the fence on the adjoining property to allow entry to the backyard, photographs show that it is highly unlikely that emergency and fire fighting personnel or equipment could pass between the properties in the event of a fire or other significant hazard. The presence of the boat inside the carport would make it even more difficult for an emergency crew to gain access to the back of the property or to the rear of the adjoining property. In this case, it is the finding of the Hearing Examiner that public safety must take priority over convenience and the appearance of the neighborhood.

Accordingly, it is the recommendation of the Hearing Examiner that the request for a variance to reduce the side yard setback to 3.5 feet (1.5 feet at the rear) be denied.

Date APRIL 27, 2000

Valerie H. Twanmoh
Zoning Hearing Examiner